



Australian  
Human Rights  
Commission

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# National Consultation Paper

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## *Shaping our future: discussions on disability rights*

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**OCTOBER 2016 – MARCH 2017**

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## **What are we doing?**

The Disability Discrimination Commissioner, Alastair McEwin, will be conducting a national consultation to help progress and guide development of his priorities and seek input from the disability community on how he can most effectively work to advance the rights of people with disability.

## **Why are we doing this?**

Alastair McEwin commenced as the full-time Disability Discrimination Commissioner in July 2016. Based at the Australian Human Rights Commission, his role is to promote and protect the rights of people with disability in Australia. He has a specific focus on discrimination against people with disabilities as defined in the *Disability Discrimination Act 1992 (Cth)* (DDA). The Commissioner's role is also informed by the *Convention on the Rights of Persons with Disabilities* (CRPD).

Commissioner McEwin succeeds the Hon Susan Ryan AO, who held the joint portfolios of Age Discrimination and Disability Discrimination Commissioner.

The Commission hosted a [National Disability Forum](#) to hear from people with disability and stakeholders in the disability sector when Commissioner Ryan took on the Disability Discrimination portfolio in 2014. The Commission also conducted a national survey to identify the key human rights issues facing people with disability ahead of the forum. The top three issues identified by respondents were: participation and inclusion in society; work and employment, and access to services.

In late 2014 the Commission was asked by the Attorney General to conduct a major Inquiry into employment discrimination against older Australians and Australians with disability. Led by Commissioner Ryan, the '[Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and People with Disability](#)' consulted widely with Australians with disability, families and carers, older people, business, employer and employee organisations and advocacy groups and stakeholders to examine barriers to employment for people with disability and older people and develop recommendations for change. The Inquiry report was released in May 2016.

Commissioner McEwin's proposed priorities are, in part, informed by the 2014 National Disability Forum and 2016 Willing to Work Inquiry report. His upcoming consultations provide an opportunity to discuss his proposed priorities with the disability community and other relevant stakeholders and seek feedback on how he can best advance the rights of people with disability in these areas.

## **How are we conducting consultations?**

The focus of the consultations will be for the disability community and its stakeholders to provide feedback to Commissioner McEwin on his proposed priorities outlined in this paper.

Community consultations will be held in each capital city and some regional centres between October 2016 and March 2017. The Commissioner will also be seeking input in meetings and small roundtables with Disabled Persons Organisations (DPOs), disability advocacy organisations, service providers, governments and other organisations. The views of a number of these stakeholders have already helped to inform Commissioner McEwin's proposed priorities.

As well as face to face consultations there will be an opportunity for stakeholders to provide input to the Commissioner via an online submission process or through their own preferred method of communication.

Details about the consultation process are available on the Commission's website at: <https://www.humanrights.gov.au/disability-discrimination-commissioner-national-consultations>.

## **Proposed priority areas**

The Commissioner has identified five proposed priority areas on which to focus during his term, although he will of course work to address other important issues as they arise. The five areas in which the Commissioner intends to focus on advancing the rights of people are (in no particular order):

- Employment
- Education
- Housing
- The criminal justice system
- Implementation of the National Disability Insurance Scheme (NDIS).

The Commissioner's work in these areas will support the organisational priorities of the Australian Human Rights Commission towards achieving the goals set out in its [Strategic Plan 2014-2018](#).

In addition to the DDA and CRPD, the Commissioner's work will be underpinned by the [National Disability Strategy 2010 – 2020](#) (NDS). The NDS outlines what Australian governments will do to redress the inequality experienced by people with disability, through developing a national approach to policy and program development. The Commissioner intends to monitor progress of the NDS, not only

through government reporting, but also through ensuring the document is a mechanism for actual change for people with disability.

Additionally, the Commissioner intends to work closely with his fellow Commissioners to ensure that the Commission takes a cross-sectional approach to the rights of people with disabilities and to address particular issues arising from the intersection of disability with age, gender, race, sexual orientation and gender identity. Such a cross-sectional approach will also underpin all the work the Commissioner undertakes.

## **Employment**

The Willing to Work Inquiry Report contains 56 recommendations under the themes of:

- priority government commitments
- improving existing systems, and
- what employers and business can do.

Adoption and implementation of these recommendations is important if we are to see improvement in the very low rate of employment of people with disability. In addition to working with the Age Discrimination Commissioner on those recommendations that intersect the rights of people with disability and older people, Commissioner McEwin intends to form productive relationships across the government, private and community sectors to drive thorough implementation of the recommendations that focus on people with disability.

## **Education**

Each year the Commission receives a significant number of complaints of disability discrimination in education. The complaints in this area cover all stages of education from kindergarten through to PhD students. Often the complainant also alleges a breach of the Disability Standards for Education under the DDA.

Chief amongst the complaints are those relating to schools. Issues raised in such complaints include: an allegation that a child has been refused enrolment at a school because the child has a disability and the school claims it does not have the resources to manage the child's disability; an allegation that a child is not being given reasonable adjustments for a disability and therefore is not reaching their academic potential; and an allegation that a child has been suspended or excluded from a school for behaviour that is a manifestation of a disability.

The Commissioner is concerned that discrimination in education, if not addressed appropriately, will mean that many children with disability will not have the means to lead fulfilling lives after they leave school; this includes getting jobs, participating in

political, cultural and social activities, and having skills and confidence to advocate for themselves. An accessible and inclusive education is the foundation to participation in many other areas of life.

## **Housing**

The lack of housing that is affordable and accessible to people with disability significantly limits their life choices and ability to fully participate in the community. The costs of modifying inaccessible homes to accommodate disability are prohibitive, and the availability of appropriate housing is critical to the successful implementation of the NDIS.

While much work has been done under the DDA on access to public premises, the accessibility of private housing is an area that requires further attention. Recognising there is some overlap and commonality between the needs of people with disability and older Australians with respect to accessible housing, the Commissioner, amongst other things, proposes to work with the Age Discrimination Commissioner in support of regulatory and other measures to increase the supply of housing which meets a minimum standard of accessibility.

## **People with disability and the criminal justice system**

People with disability frequently experience discrimination when interacting with the criminal justice system in all jurisdictions in Australia. This discrimination compounds the disadvantage experienced by many people with disability in other aspects of life.

In 2013 the Australian Human Rights Commission conducted a comprehensive consultation process to identify the barriers experienced by people with disability in the justice system. Commissioner McEwin intends to work to address the issues identified in the consultation report, [‘Equal Before the Law’](#).

He is particularly concerned about: the indefinite detention of people with cognitive and psychiatric impairment; the prevalence of children with disability in the juvenile justice system and the role of the education system; and the over-representation in the justice system of Aboriginal and Torres Strait Islander people with disability.

## **Implementation of the NDIS**

The NDIS is a significant structural reform with the potential to create positive changes in the lives of many Australians with disability and their families. While progressive rollout of the Scheme across most states and territories has only recently commenced, a number of concerns have already been brought to the attention of the Commissioner.

The Commissioner intends to focus on promoting the advancement of the rights of people with disability through the NDIS to the greatest extent possible, with a focus on ensuring the scheme is free of discrimination for people with disability. Some initial areas of attention for the Commissioner include:

- the interaction between the aged care system and the NDIS for people with disability over 65,
- promoting choice and control in access to housing for people within the NDIS, particularly those who require supported accommodation, and
- empowering people with disability to exercise their rights and responsibilities under the scheme, including by enabling informed decision making.

### **Other areas of work / approach**

In addition to the above proposed priorities, Commissioner McEwin notes that there are many other areas of life where discrimination against people with disability is prevalent. To that end, and within the resources available, the Commissioner intends to also do the following:

- Monitor progress of Standards under the DDA (an example being the current review of the Access to Premises – Building Standards).
- Seek opportunities to advocate on and develop systemic national approaches for issues arising from individual complaints, the exemptions process under the DDA, and other external processes, such as law reform processes. An example is advocating for the recommendations from the Australian Law Reform Commission's report [Equality, Capacity and Disability in Commonwealth Laws](#) to be implemented.
- Engage in a range of activities to raise awareness of issues affecting people with disability. Activities will include speaking at public events, media appearances and publishing articles in print and online media.

### **Consultation questions**

The Disability Discrimination Commissioner's national consultations will be guided by the following questions in relation to his proposed priority areas:

- What do you think needs to change to see the rights of people with disability better protected in these proposed areas?
- What do you think is already being done well in these areas that could be built upon to achieve greater systemic change?
- What would you like to see the Disability Discrimination Commissioner do to most effectively advance the rights of people with disability in these areas?